the rent during the period; I saw no receipts or other evidence of any payments. Nor was I shown any documentary evidence of transaction of any kind in respect of the land from 1934 to the time of the Japanese Invasion. During this period the plaintiff undertook by the Power of Attorney (Exhibit G) "to keep a true account of the revenue and expenditure in respect of the land". The evidence is that for the greater portion of the years from 1916 to 1947 the defendants' family enjoyed the land. How the plaintiff came to pay the rent and derive no benefit seems inexplicable — if indeed he did so pay throughout the whole period.

For 18 years the plaintiff admits he derived nothing from the land while the defendants' family tapped and sold the rubber from 1922 onwards. Then in 1934 the plaintiff obtains the Power of Attorney (Exhibit G) which requires him to manage the land he now claims was his property at that time. Then after the death of his brother Ibrahim in 1944 he takes no step in regard to the land until the issue of this summons in 1947.

In my view the plaintiff has by his conduct in standing by and particularly in accepting the Power of Attorney Exhibit G barred himself from obtaining the relief he seeks.

The plaintiff's claim is dismissed with costs in favour of the defendants.

It follows that the interim injunction granted on the 12th of May 1947 is dissolved.

The exhibits are to be returned to the parties tendering them.

Claim Dismissed.

RE CHEW AH SANG DECEASED. CHEW KIM WAH v. HO KIM EE AND OTHERS.

[Orig. Civil Juris. (Bostock Hill, J.) March 11, 1948]
[Penang — Orig. Summons No. 215 of 1947]

Will — Construction — Direction to spend income on yearly ceremonies according to Chinese customs — Uncertainty.

Clause 7 of the Will of Chew Ah Sang deceased read "I direct my executors to pay out of the income of my estate all outgoings including the usual sums of money to be spent on yearly ceremonies according to Chinese custom". One of the questions raised in this Clause 7 was whether this direction is valid in law.

Held, that the direction is not valid in law and fails by reason of uncertainty.

Cases referred to:—

(1) *In the Matter of the Estate of Khoo Cheng Teow, deceased* (1932) S.S.L.R. 226.

(2) *Cheang Thye Phin v. Lim Ah Chen and others* Originating Summons 361/1912 unreported.

ORIGINATING SUMMONS.

C. D. Hogan for the Plaintiff.

Lim Cheng Ean for the Defendants.

Bostock-Hill, J.: — This Originating Summons asked for certain relief and for the determination of a number of points arising out of the construction of the Will of Chew Ah Sang deceased.

At this particular hearing only the questions of construction were dealt with.

There were 6 "questions" for determination. *Questions 1 and 2* were answered in the affirmative and oral judgments were given. *Questions 3, 4 and 5,* in view of the findings in Questions 1 and 2, did not arise. There remained therefore only *Question 6.*

This Question was as follows:—

> Whether the direction to the Executors to pay out of the income of the estate the usual sums of money to be spent on yearly ceremonies according to Chinese custom is valid in law.

This direction was contained in Clause 7 of the Will, which reads as follows:—

> I direct my executors to pay out of the income of my estate all outgoings including the usual sums of money to be spent on yearly ceremonies according to Chinese custom.

Mr. Hogan (for the Plaintiff) submitted that the direction is bad for vagueness and also offends against the Rule against Perpetuities.

Mr. Cheng Ean (for both Defendants) agreed that it was bad for vagueness. He stated that "yearly ceremonies" was too vague to be given effect to, though on the Perpetuities question it might be argued from the whole will that "the usual sums of money" were only to be paid out until the estate was distributed on the testator's grandson attaining the age of 21 years and that thus the direction does not offend against the Rule against Perpetuities.

I am of opinion that Mr. Cheng Ean was correct and that the direction did not offend against the Perpetuities Rule, but I think the direction fails by reason of uncertainty.

This view is supported by the judgment of Terrell, J. in *In the Matter of the Estate of Khoo Cheng Teow, deceased*[1]. At page 229 of his Judgment the learned Judge refers to an unreported Penang case *Cheang*

Thye Phin v. Lim Ah Chen and others[2] where a certain part of the Trust Fund was bequeathed by Clause 12 of the Will to the Trustees to be expended, inter alia, "in providing for and performing the proper yearly ceremonies according to Chinese custom for my deceased ancestors, myself and my wives, etc". The judgment of Terrell, J. contains the following passage :—

> The matter, however, went to appeal and the formal order of the Court of Appeal declared that there was an intestacy with regard to the income of the two shares bequeathed for ceremonies. From the written judgments it is clear that the gift was held to be void on the ground of uncertainty.

The answer to *Question 6* is, therefore, that the direction is not valid in law.

The costs of both parties for this hearing should be taxed as between Solicitor and Client and paid out of the estate.

Order Accordingly.

HAJI ABDUL HAMID v. M. K. RAMASAMY PILLAI.

[Orig. Civil Juris. (Evans, J.) March 17, 1948]
[Ipoh — Civil Suit No. 25 of 1947]

Landlord and Tenant — Claim for possession — Acceptance of rent after expiry of notice to quit.

In this case the plaintiff claimed possession of premises let to the defendant on a monthly tenancy. One of the points raised in defence was that rent had been accepted after the commencement of the action and it was argued that the acceptance of rent implied a new tenancy.

Held, (1) that acceptance of rent is merely evidence from which an agreement of a new tenancy may be inferred but it is evidence which must be assessed in the light of all the circumstances and relations of the parties; (2) that in the circumstances of this case it would be manifestly unreasonable to infer such an agreement from the acceptance of rent.

Cases referred to :—

(1) *Hartell v. Blackler* (1920) 2 K.B. 161.
(2) *Davies v. Bristow* (1920) 3 K.B. 428.
(3) *Shuter v. Hersh* (1922) 1 K.B. 438.
(4) *Morrison v. Jacobs* (1945) 1 K.B. 577.
(5) *Lowenthal v. Van Honte* (1947) L.J. K.B. 421.

CIVIL SUIT.

Plaintiff in person.

M. S. Mahendran for the Defendant.

Evans, J. : — In this case the Plaintiff is claiming possession of a house known as No. 9, Jalan Datoh, Kuala Kangsar, of which he is owner, from the Defendant to whom, he says, he had let it on a monthly tenancy. He also avers that he has obtained the consent of the Rent Board and has served the Defendant with a notice to quit. All this, except the nature of the tenancy, is admitted, and that the parties have in fact been twice before the Rent Board and before the District Court, and that two notices to quit have been served. The effect of these on one another is not raised and they are accepted as good and effective to determine a monthly tenancy.

The Defendant pleaded that the tenancy was a yearly one. He asserts that a lease was made for 3 years and he subsequently held over. He has failed to prove that lease. Were the lease here, there might be terms implying that on holding over he remained as a yearly tenant. The only evidence I have of the tenancy is that the rent is paid monthly. The usual tenancy here is a monthly tenancy, and I shall treat this tenancy as a monthly tenancy. For such the notices are good.

The first order of the Rent Board gave the Defendant 8 months' grace, and at the end of that period the Plaintiff gave the Defendant notice to quit at the expiry of one month. The following month he took action in the District Court and obtained judgment. Unfortunately for him, the rent is $75/- per month and the District Court had no jurisdiction. On that ground alone an appeal was allowed. On 28th February, 1947, the Plaintiff served another notice. The need of this is not apparent as the only defect, though a substantial one, in the decision and order of the District Court was that it was beyond that Court's jurisdiction. One result of the second notice seems to have been that the Defendant made another application to the Rent Board to reconsider their earlier decision. The Board then made this order of 31st March on which Mr. Mahendran bases his first point. The order reads as follows :—

> The Board decides to confirm the previous order having regard to the former order of the Board and to allow extension if applicant Ramasamy Pillai applies.

Mr. Mahendran criticises that order quite properly and says it is not definite, clear, and decisive, as indeed it is not. It is, however, conclusive on this Court. It begins: "The Board decides to confirm the previous order...." That is clear enough. It goes on: "having regard to the former order of the Board." Those words are to me almost meaningless. If I had to construe the order and attach meaning to those words, I should be inclined to read them with the following words, although separated from them, by an